UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANNAMARIE TROMBETTA, Plaintiff, v. NORB NOVOCIN, MARIE NOVOCIN, and ESTATE AUCTIONS INC., et al., Defendants.	Case No. 18-cv-0993-RA-SLC **Defendants' Memorandum in Opposition to Plaintiff's Motion to Amend Judgement and for Relief From Judgment**

PRELIMINARY STATEMENT

Defendants Norb Novocin ("Norb"), Marie Novocin ("Marie"), and Estate Auctions, Inc. ("Estate") (referred to collectively herein as "Defendants"), by and through their attorneys, Duff Law PLLC, hereby seek an order denying Plaintiff's motion to alter or amend judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure and for relief from a judgment based upon errors pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. (Pl.'s Mot. Amend, ECF No. 547.) Plaintiff has made no new arguments, raised no new issues, and has not presented any evidence that the Court has not already considered. Defendant Worthpoint Corporation ("Worthpoint") opposes Plaintiff's motion. (Def.'s Mem. Opp'n Pl.'s Mot., ECF No. 547.) To avoid duplicative filings, Defendants join Worthpoint's opposition and incorporate its arguments as if restated herein.

ARGUMENT

Plaintiff asks the Court to alter or amend its February 20, 2024 order (the "Order"), ECF No. 538, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Plaintiff also asks the Court for relief from its Order pursuant to Rule 60(b)(1), (b)(2), (b)(3), and (b)(6) of the Federal

Rules of Civil Procedure. (Pl.'s Mot. Amend, ECF No. 547, 2, 12, 42.) Plaintiff's motion is an obvious attempt to relitigate the issues previously considered and resolved by the Court in its Order. Plaintiff's invocation of Rules 59 and 60 of the Federal Rules of Civil Procedure is mere window dressing.

I. Plaintiff's Motion Fails Under Fed. R. Civ. P. 59(e)

"Motions for reconsideration are governed by Federal Rule of Civil Procedure 59(e) and Local Civil Rule 6.3, which are meant to 'ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters.'" *Sjunde AP-Fonden et al. v. General Elec. Co.*, 17-CV-8457 (JMF), 2024 WL 1208778, at *1 (S.D.N.Y. Mar. 21, 2024) (quoting *Medisim Ltd. v. BestMed LLC*, No. 10-CV-2463 (SAS), 2012 WL 1450420, at *1 (S.D.N.Y. Apr. 23, 2012) (internal quotation marks omitted)). "It is well-settled that Rule 59 is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a second bite at the apple." *Id.* (quoting *Analytical Survs., Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012). "Rather, the standard for granting a Rule 59 motion for reconsideration is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked." *Id.* "The standard for granting such a motion is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked – matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 256-57 (2d Cir. 1995). "The decision to grant or deny a motion for reconsideration is 'committed to the sound discretion of the district court.'" *Sigmon v. Goldman Sachs Mortg. Co.*, 229 F. Supp. 3d 254, 257 (S.D.N.Y. 2017) (quoting *Wilder v. News Corp.*, 11 Civ. 4947 (PGG), 2016 WL 5231819, at *3 (S.D.N.Y. Sept. 21, 2016)).

Because Plaintiff fails to identify any controlling decisions or data overlooked by the Court

that might reasonably be expected to alter the conclusion articulated in the Court's Order, Plaintiff's motion to alter or amend the Order pursuant to Rule 59(e) of the Federal Rules of Civil Procedure should be denied in its entirety.

II. Plaintiff's Motion Fails Under Fed. R. Civ. P. 60(b)

"On a motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; [and] (6) any other reason that justifies relief." Fed. R. Civ. P. 60(b)(1), (b)(2), (b)(3), and (b)(6).

"The granting of a Rule 60(b) motion on any ground is considered 'extraodrinary judicial relief' and thus requires 'a showing of exceptional circumstances.'" *Reid v. City of New York*, 20 Civ. 644 (GBD(JLC), 2024 U.S. Dist. LEXIS 2279, at *7 (S.D.N.Y. Jan. 3, 2024) (denying Rule 60(b) motion filed by *pro se* party). "Where a Rule 60(b) motion 'seeks only to relitigate issues already decided,' the motion is properly denied." *Id.* (quoting *Maldonado v. Loc. 803 Int'l Bhd. of Teamsters Health & Welfare Fund*, 490 F. App'x 405, 406 (2d Cir. 2013)).

Plaintiff's motion fails to describe any mistake, inadvertence, surprise, or excusable neglect" by the Court or any Party. Plaintiff's motion therefore fails insofar as it is made pursuant to Rule 60(b)(1). Likewise, Plaintiff's motion fails to describe any newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b). Plaintiff's motion therefore fails insofar as it is made pursuant to Rule 60(b)(2). Although Plaintiff's motion makes liberal use of the word "fraud," Plaintiff's motion fails to identify any actual fraud, misrepresentation, or misconduct by an opposing Party. Plaintiff's motion therefore fails insofar as it is made pursuant to Rule 60(b)(3).

The Second Circuit describes the catch-all provision of Rule 60(b)(6) as "a grand reservoir of equitable power to do justice in a particular case." *U.S. v. Cirami*, 563 F.2d 26, 32 (2d Cir. 1977) (quotation omitted). The Second Circuit has, however, cautioned that Rule 60(b)(6) should be invoked only when "extraordinary circumstances" justify relief or "when the judgment may work an extreme and undue hardship[.]" *Nemaizer v. Baker*, 793 F.2d 58, 63 (2d Cir. 1986). Neither the Court's Order nor the actions of any Defendant has worked any extreme and undue hardship against Plaintiff. Plaintiff's motion therefore fails insofar as it is made pursuant to Rule 60(b)(6).

CONCLUSION

For the foregoing reasons, Defendants respectfully request Plaintiff's motion be denied in its entirety.

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